

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6777

BILL NUMBER: HB 1305

NOTE PREPARED: Feb 20, 2007

BILL AMENDED: Feb 19, 2007

SUBJECT: Cemetery Funds.

FIRST AUTHOR: Rep. Cheatham

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State

Summary of Legislation: (Amended) This bill establishes the Consumer Protection Fund for Cemetery Maintenance. The fund consists of contributions from the owners of certain cemeteries. The bill requires the State Board of Funeral and Cemetery Service to administer the fund. It provides that the fund may be used for maintenance of a cemetery when the owner is unable to maintain the cemetery and money is not available from the cemetery's perpetual care fund. It establishes the maximum balance amount of the Consumer Protection Fund at \$250,000.

The bill increases the maximum balance amount of the preneed Consumer Protection Fund from \$1.5 M to \$2.5 M.

The bill specifies that a cemetery perpetual care fund must be segregated from other accounts belonging to the owner of the cemetery. It requires the custodian or trustee of a cemetery's perpetual care fund to file an annual accounting with the Board of Funeral and Cemetery Service. It authorizes the board to audit a cemetery perpetual care fund.

Effective Date: July 1, 2007.

Explanation of State Expenditures: (Revised) *Consumer Protection Fund for Cemetery Maintenance:* The State Board of Funeral and Cemetery Service must administer the Consumer Protection Fund for Cemetery Maintenance and deposit required contributions in the fund. The board is authorized to audit a cemetery perpetual care fund. The cemetery that is the subject of the audit must pay the costs associated with the audit.

The Professional Licensing Agency (PLA) will also need to process annual accountings filed with the board.

The PLA provides administrative services to the board. The PLA's administrative expenses will increase. However, expenses of administering the fund must be paid from money in the fund. Money in the fund and interest accruing remain in the fund and do not revert to the state General Fund. Money in the fund is continuously appropriated.

Money in the fund may be used to provide cemetery maintenance when the board finds that:

- (1) the owner of a cemetery is unable to maintain the cemetery;
- (2) money in the perpetual care fund of the cemetery is depleted, subject to a dispute, or otherwise unavailable; and
- (3) interested persons are unable to take over the management, care, and general supervision of the cemetery.

The owner of a lot in a cemetery, the next of kin, or another interested person may request maintenance assistance from the fund by filing a verified complaint with the board. The board must complete an investigation of the complaint within 30 days and issue findings of fact. If the board finds that maintenance is required, the board may enter into a contract with any suitable person to provide maintenance at the cemetery until a responsible person is able to provide care and maintenance for the cemetery.

The board must annually review the balance of the fund. If the maximum balance equals or exceeds \$250,000, the board must suspend payments to the fund until after the next annual review in which the board determines that the balance is less than \$250,000.

Explanation of State Revenues: *Consumer Protection Fund for Cemetery Maintenance:* There are 108 cemeteries with active licenses in the state and 46 crematoriums. The amount of revenue that will be generated for the fund is indeterminable.

The owner of a cemetery must contribute the following to the Consumer Protection Fund for Cemetery Maintenance:

- (1) In the case of a cemetery for earth burials, an amount equal to 1% of the sale price of each burial plot sold or transferred.
- (2) In the case of a community or public mausoleum or a community or public garden crypt, 1% of the sale price of each sale of entombment or inurnment rights.
- (3) In the case of a community columbarium, an amount equal to \$2 per niche sold or transferred.

The owner must remit contributions required to the board for deposit in the fund.

In the case of a payment to a cemetery owner of part of the sale price for a burial plot, entombment or inurnment rights, or a niche, the cemetery owner must pay to the fund an amount proportional to the amount required. In the case of a nonmonetary transfer in the sale of a burial plot, entombment or inurnment rights, or a niche, the cemetery owner must pay to the fund the cash equivalent that would be required if the sale were for cash.

Payments are required only on the original sale or transfer and are not required for any subsequent resale or transfer of the same plot, rights, or niche.

If the cost of maintaining a cemetery is paid from the fund, the fund is entitled to recover the amount paid from the owner of the cemetery, and the board must ask the Attorney General to take all reasonable steps to collect that amount from the cemetery owner. Any amount collected from a cemetery owner must be deposited in the fund.

Preneed Consumer Protection Fund. As of December 31, 2006, the preneed Consumer Protection Fund had a balance of \$138.71. The bill increases the maximum balance from \$1.5 M to \$2.5 M.

Background: IC 30-2-13-27 provides that each seller of a prepaid contract must pay to the State Board of Funeral and Cemetery Service \$2.50 for each contract having a value of less than \$500; \$5 for each contract having a value of at least \$500 and less than \$1,500; and \$10 for each contract having a value of \$1,500 or more.

The money collected is deposited in the fund. Expenses of administering the fund are paid from money in the fund. Money in the fund and the interest accruing to the fund remain in the fund and do not revert to the state General Fund. Money in the fund may be used to provide restitution to a seller who performs a defaulted contract, to a purchaser, or to a purchaser's estate for pecuniary loss arising from a trust or an escrow required by law.

The status of the fund must be annually reviewed by the board. If the board determines during its annual review that the fund balance equals or exceeds \$1.5 M, the board must suspend payments to the fund until after the next annual review that the board determines that the fund balance is less than \$1.5 M.

Explanation of Local Expenditures: The bill does not apply to a cemetery owned by a municipal corporation or other governmental unit.

Explanation of Local Revenues:

State Agencies Affected: PLA.

Local Agencies Affected:

Information Sources: Traci Hicks, State Board of Funeral and Cemetery Service, 317-232-3901, PLA; Auditor's Data.

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